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Before the
Federal Communications Commission
Washington, D.C. 20554

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JUN 29 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 19 of)
the Cable Television Consumer)
Protection and Competition Act of)
1992)
)
Annual Assessment of the Status of)
Competition in the Market for the)
Delivery of Video Programming)
)
)
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CS Docket No. 94-48

COMMENTS

BellSouth Telecommunications, Inc. ("BellSouth"),
hereby submits these comments in response to the
Commission's Notice of Inquiry (FCC 94-119), released May
19, 1994, in the above-referenced docket ("Notice"). The
purpose of this inquiry is to gather information for the
Commission to use to comply with the directive of the 1992
Cable Act requiring an annual report on the status of
competition in the market for delivery of video programming.

The goals of this proceeding, as stated by the
Commission, are threefold:

1. to gather information sufficient to prepare a preliminary analysis for Congress on the current state of competition to cable provided by alternative distribution technologies;
2. to collect information on whether and the extent to which the conduct and practices of multichannel video programming vendors and distributors have changed; and
3. to identify the information required to enable the Commission to prepare more comprehensive analyses

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in its future reports and the appropriate means of obtaining it.¹

BellSouth's comments will address only the Commission's request for information relating to video dialtone.²

(a) Should the Commission seek competitive analysis information from the LECs conducting video dialtone market and technical trials? To what extent is such data proprietary or confidential?

The LECs' competitive analyses are not appropriate information for construction of the annual report. To the extent that such analyses include information regarding numbers of households passed by video dialtone facilities or by cable systems or the numbers of subscribers to either, such information can be provided without submission of competitive analyses.

Competitive analyses generally go beyond statistics to assessment of the competitors' strengths or weaknesses in the market. Such information will not contribute to the Commission's production of the annual report. A requirement to submit such analyses would jeopardize the confidentiality of valuable and competitively sensitive work done by the LECs. Disclosure of this information would serve only to afford incumbent cable operators valuable insights into LECs' competitive strategies and tactics.

(b) Are numbers of subscribers to a basic platform relevant to the Commission's inquiry? What other information, if any, pertaining to subscribers would

¹ Notice at ¶ 8.

² Notice at ¶ 41 - 46.

aid the Commission's understanding of the competitive impact of video dialtone?

The number of subscribers to a basic video dialtone platform will not provide the Commission with the information needed to assess the status of competition in the delivery of video programming. The existence of a basic video dialtone platform and even subscription to that platform does not necessarily indicate the presence of a competitive alternative to the incumbent cable operator. As Congress has recognized, effective competition for the entrenched cable monopolies requires an offer of "comparable video programming."³

What the Commission needs is information regarding the programming offers of video dialtone programmers and subscription to those offers. Specifically, the Commission needs to know whether any programmer on a video dialtone platform offers a comparable package of programming to subscribers at a competitive price and without subjecting subscribers to equipment costs that the cable operator's subscribers are not required to bear. The Commission also needs to know whether subscribers to programming delivered over video dialtone have substituted that programming for cable service or whether they use the programming merely to augment their cable service. If a programming alternative is not seen by subscribers as a replacement for their

³ 47 U.S.C. § 543(1)(1)(B)(i).

existing cable service, it can hardly be regarded as a competitive alternative.

LECs providing video dialtone service (or channel service for overbuilders) will not necessarily have this information. The Commission must likely depend upon the competitive programmers themselves to submit such information.

(c) Should non-video and other programming services with a video component (e.g., data, text, informational) provided over the video dialtone platform be included in the Commission's analysis, or should the Commission focus solely on video programming offerings?

As stated above, only a comparable programming offering should be regarded a competitive alternative to existing cable services. To include "non-video and other programming services with a video component" in the Commission's analysis of competition will not further the statutory objective and will divert attention from issues that concerned Congress.

(d) What type of information pertaining to program suppliers should the Commission examine?

If video dialtone is to provide a competitive alternative to existing cable services, programmers on the video dialtone platform must have access to most of the same program sources as cable operators. The Commission needs information regarding what programming is being made available to video dialtone programmers to assure that they are not being excluded from popular programming sources.

(e) What is the appropriate means of comparing prices charged to subscribers for video dialtone and video programming services to prices charged to subscribers for cable? What information does the Commission need to solicit to make such a comparison and is such a comparison feasible?

The comparison of prices must be made from the subscriber's perspective. Therefore, it must include video dialtone programmers' charges for programming comparable to the incumbent cable operators' programming, any network charges paid to LECs, any equipment required to convert digital signals to analog, and any additional house wiring costs. Only by including all of the costs that the subscriber must bear can the Commission assess whether an alternative is truly competitive. This information is not likely to be available from LECs, but may have to be obtained from programmers or by other means, such as surveys.

As the Commission stated, video dialtone is a "nascent service."⁴ It is not yet a reality in the marketplace. Not only is it too early to provide subscription data, it is also too early to answer the other questions raised at paragraph 46 of the Notice. The answers to these and other questions regarding the competitive viability of video dialtone and other LEC-provided video distribution alternatives will only be available after opportunities for substantial marketplace experience with video dialtone have been authorized by the Commission. The most effective

⁴ Notice at ¶ 46.

action by the Commission to obtain answers to these and the many other unanswered questions regarding video dialtone would be to approve expeditiously the various requests for authority to construct and operate facilities for video dialtone service and other vehicles for introducing cable competition.

The incumbent cable operators recognize that video dialtone threatens their entrenched monopolies and have used the Section 214 process to delay the introduction of video dialtone. Cable operators or their associations have intervened in opposition to almost every application. The Commission must not allow these self-serving interventions to delay unnecessarily the processing of video dialtone applications or other applications proposing a competitive video distribution system. Expeditious review and authorization of video dialtone and other LEC-proposed alternatives will facilitate the entry of effective

competition into the market for video distribution and is a prerequisite to development of the information about video dialtone needed for the Commission's annual report. Otherwise, the Section 214 application process will become a regulatory barrier delaying the introduction of video dialtone services.

Respectfully submitted,

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Date: June 29, 1994

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of June, 1994, serviced all parties to this action with a copy of the foregoing COMMENTS reference to CS Docket No. 94-48, by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.

A handwritten signature in cursive script, reading "Julia W. Spires", written over a horizontal line.

Julia W. Spires

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